

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

POLARIS IMAGES CORPORATION

Plaintiff,

- against -

MEDIATAKEOUT.COM LLC

Defendant.

Docket No. 1:18-cv-4843

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Polaris Images Corporation (“Polaris” or “Plaintiff”) by and through its undersigned counsel, as and for its Complaint against Defendant Mediatakeout.com LLC (“MediaTakeOut” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of American civil rights activist Rachel Dolezal braiding blue hair. Accordingly, Polaris seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Polaris is an independent photo agency that represent content owners around the world. Polaris has exclusive relationships with some of its contributors. Polaris has a place of business at 259 West 30th Street, 14th Floor, New York, New York 10001.

6. Upon information and belief, MediaTakeOut is a domestic limited liability company duly organized and existing under the laws of the State of New York, with a place of business at 130 Church Street, #267, New York, New York 10007. Upon information and belief, MediaTakeOut is registered with the New York State Department of Corporations to do business in New York. At all times material, hereto, MediaTakeOut has owned and operated a website at the URL: www.MTONews.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Rachel Dolezal who has an exclusive licensing agreement with Polaris own the copyright to a photograph of Rachel Dolezal braiding blue hair (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Polaris is Rachel Dolezal’s exclusive licensing agent.

9. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-102-595.

B. Defendant’s Infringing Activities

11. On April 10, 2018, MediaTakeOut ran an article on the Website entitled *Rachel Dolezal Has a New HUSTLE. Doing WEAVES.. At Her Kitchen Table!! (PICS)*. See <https://mtonews.com/rachel-dolezal-has-a-new-hustle-doing-weaves-at-her-kitchen-table-pics>.

The article prominently featured the Photograph. A screen shot of the article with the Photograph is attached hereto as Exhibit B.

12. MediaTakeOut did not license the Photograph from Plaintiff for its article, nor did MediaTakeOut have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST MEDIATAKEOUT)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. MediaTakeOut infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. MediaTakeOut is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by MediaTakeOut have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).
19. Plaintiff further is entitled to its attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant MediaTakeOut be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Plaintiff be awarded its costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
May 31, 2018

LIEBOWITZ LAW FIRM, PLLC
By: /s/Richard Liebowitz

Richard P. Liebowitz
11 Sunrise Plaza, Suite 305
Valley Stream, New York 11580
Tel: (516) 233-1660
RL@LiebowitzLawFirm.com

Attorneys for Plaintiff Polaris Images Corporation